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9 POLICE CHIEF PACO BALDERRAMA.

10 **UNITED STATES DISTRICT COURT**
11 **EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

12
13 MARTHA ZEPEDA OLIVARES,
14 individually and on behalf of the
ESTATE OF MAXIMILIANO SOSA,
15 JR.; MAXIMILIANO SOSA, SR,

16 Plaintiffs,

17 v.

18 CITY OF FRESNO; UNKNOWN
LAW ENFORCEMENT OFFICERS,
19 POLICE CHIEF PACO
BALDERRAMA and DOES 1-30,

20 Defendants.

Case No. 1:23-cv-01575-JLT-SAB

**STIPULATION AND JOINT
REQUEST TO CONTINUE
RESPONSE TO COMPLAINT AND
MANDATORY SCHEDULING
CONFERENCE**

Complaint Filed: 02/23/2024
Current Response Date: 03/08/2024

21
22 **TO THE HONORABLE COURT:**

23 IT IS HEREBY STIPULATED BY MARTHA ZEPEDA OLIVARES and
24 MAXIMILIANO SOSA, SR. ("plaintiffs"); CITY OF FRESNO, UNKNOWN LAW
25 ENFORCEMENT OFFICERS, and POLICE CHIEF PACO BALDERRAMA
26 (collectively "defendants"), for the purpose of jointly requesting that the honorable
27 Court continue defendants' responsive pleading date and the scheduling conference
28 until decedent's wife and children, who are represented by separate counsel, join in

1 the complaint.

2 **GOOD CAUSE STATEMENT.**

3 1. The parties hereby stipulate and request the Court to **continue the**
4 **responsive pleading date and the scheduling conference** until decedent's wife and
5 children, who are represented by separate counsel, join in the complaint.

6 2. On February 23, 2024, plaintiffs filed and served the First Amended
7 Complaint ("FAC") on defendant City of Fresno.

8 3. On March 4, 2024, the parties met and conferred regarding defendants
9 motion to dismiss the FAC for lack of standing.

10 4. The decedent in this action has additional heirs not currently named as
11 plaintiffs, and under California law named plaintiffs "have a mandatory duty to join
12 all known omitted heirs in the 'single action' for wrongful death." *Hall v. Superior*
13 *Court* (2003) 108 Cal. App. 4th 706, 715. Should a known heir (or heirs) be omitted
14 from a lawsuit, the plaintiff(s) would be liable to the omitted heir(s) for any damages
15 that resulted. *Watkins v. Nutting* (1941) 17 Cal.2d 490, 499.

16 5. Additionally, if the defendant(s) had knowledge of any heirs that were
17 not made a part of the wrongful death lawsuit, then the defendant(s) would have
18 waived the 'one action rule'; meaning that those unnamed heirs may be able to bring
19 a separate wrongful death lawsuit. *Smith v. Premier Alliance Ins. Co.* (1995) 41
20 Cal.App.4th 691, 697.

21 6. Currently unnamed heirs, who would be proper parties to a wrongful
22 death lawsuit under California law, are represented by separate counsel. Those
23 attorneys have indicated to the parties that they will not be filing a complaint for at
24 least a couple more months and are considering filing around August of 2024.

25 7. Both parties have a legitimate interest in ensuring that the additional and
26 currently unnamed heirs are properly added to the complaint. As such, during the
27 parties' meet and confer, the parties agreed to request a continuance of the responsive
28 pleading date and the mandatory scheduling conference.

STIPULATION TO STAY ALL FURTHER PROCEEDINGS

8. Accordingly, in light of the foregoing Good Cause, the parties hereby stipulate to and jointly request that the Court continue the responsive pleading date and the scheduling conference until at least September of 2024.

9. The parties would also be amenable to taking the responsive pleading date and the mandatory scheduling conference off calendar until the additional heirs of the decedent are properly added to the complaint.

10. This Stipulation may be signed in counterpart and a facsimile or electronic signature shall be as valid as an original signature.

IT IS SO STIPULATED.

DATED: March 6, 2024

Respectfully submitted,

**MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP**

By: /s/ Mildred K. O'Linn

Mildred K. O'Linn, Esq.
Lynn L. Carpenter, Esq.
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FRESNO; UNKNOWN LAW
ENFORCEMENT OFFICERS, and
POLICE CHIEF PACO BALDERRAMA

DATED: March 6, 2024

Respectfully submitted,

LAW OFFICE OF KEVIN G. LITTLE

By: /s/ Kevin Little

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Michelle Tostenrude, Esq.
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ZEPEDA OLIVARES, individually and on
behalf of the ESTATE OF
MAXIMILIANO SOSA, JR.;
MAXIMILIANO SOSA, SR

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